

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CACR 06-1008

May 9, 2007

JOHN CARR MURIE

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR-2005-3626]

V.

HONORABLE CHRIS PIAZZA,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant John Murie appeals his conviction for reckless burning in violation of Arkansas Code Annotated § 5-38-302 (Repl. 2006). Appellant argues that the State failed to introduce substantial evidence that he started the fire that destroyed the Mosaic Templars Cultural Center. We find that there was substantial evidence to support appellant's conviction and affirm.

Appellant and another individual, Wade Smith, were charged with reckless burning in the March 16, 2005, fire that destroyed the Mosaic Templars Cultural Center, located at Ninth and Broadway in downtown Little Rock. At the time of the fire, the building was vacant and undergoing renovations. Appellant and Smith, who were both homeless, allegedly entered the building to escape the cold weather and started a fire. The fire subsequently got out of control and destroyed the building.

Appellant was tried separately in a bench trial held on April 25, 2006. Jerry Eslick, a cab driver, testified that he had come in contact with both appellant and Smith on the evening before the fire took place. Eslick testified that both men were drinking whiskey. He testified that he drove appellant and Smith around, trying to help them find a place to stay, and that he eventually dropped them off at the West Markham Salvation Army. Eslick stated that he gave the men his cell-phone number, and the men told him they would pay him for driving them around if he took them to pick up their paychecks at a temporary-service agency the next day.

Eslick testified that the next morning, around 9 a.m., Smith called him and stated both he and appellant were at Seventeenth and Broadway. Eslick picked up the two men and drove down Broadway toward the I-630 exit. According to Eslick, as they passed the burned building, he remarked on the building being burned, and the two men reacted by “jump[ing] up” and looking. The two men said the same thing at the same time: “I’ll be damn, it sure did.” Eslick dropped the two men off at Wendy’s in west Little Rock around 11 a.m. and returned to pick them up around 4:30 p.m. Eslick testified that the two men had been drinking, and Smith told him about a lady they had spoken to who told them they smelled smoky. Smith admitted to Eslick that they knew something about the building burning down. Smith told Eslick that some guys on the street had told them where the building was and how to get in. According to Eslick, appellant was drunk at this time and told Smith several times, “You saved my life, man.” After appellant and Smith retrieved their paychecks, Eslick took the men to the home of Smith’s ex-girlfriend in Booneville.

The men visited with Kathryn Terry, the ex-girlfriend, for twenty or thirty minutes. Eslick left the men in Booneville.

Kathryn Terry testified that Smith and appellant came to see her around ten o'clock at night on March 16, 2005. Terry testified that she had heard about the fire on the news prior to their arrival. Terry testified that Smith told her that he and appellant "had burned a building in Little Rock." Terry also testified that appellant told her that Smith had saved his life by pulling him out of the building because the fire had gotten out of control. According to Terry, appellant also told her that he and Smith "were cold and needed a dry place, and needed warmed, and had built a fire." Terry testified that it was her impression from appellant that he was involved in the fire: "They left the halfway house together. They went to the building together. Started the fire together."

Finally, Detective J.C. White with the Little Rock Police Department testified that he interviewed appellant on August 7, 2005. White testified that appellant told him, "Wade told [Eslick, the cab driver] that we burned the building down." White testified that appellant said he and Smith had gone into the building to get out of the weather, but he did not remember how they got into the building. Appellant did not remember starting the fire, and he was not sure if he had started the fire, but he was sure that it was an accident. Appellant told White that he was very intoxicated and did not remember much of what happened. Appellant stated that he laid down and went to sleep after they entered the building, and the next thing he remembers is waking up and Smith saying, "Come on, we're on fire."

At the close of the State's evidence, appellant moved for a directed verdict, arguing that the State had not shown that appellant was in fact the person who purposely started the fire. The court denied the motion, noting that (1) the defendants were charged jointly, i.e., *they* purposely started the fire; (2) the evidence placed appellant at the scene; and (3) appellant's statements that he does not remember starting the fire were "self-serving." The defense rested without presenting additional evidence and again renewed his motion for directed verdict. The court found appellant guilty and sentenced him to a term of ten years in the Arkansas Department of Correction. A timely appeal to this court followed.

A motion for directed verdict is viewed as a challenge to the sufficiency of the evidence. *Williams v. State*, 96 Ark. App. 277, ___ S.W.3d ___ (2006). The test for determining evidentiary sufficiency is whether there is substantial evidence to support the finding of guilt. *Id.* On appeal, the court reviews the evidence in the light most favorable to the appellee and sustains the conviction if there is any substantial evidence to support it. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.*

Arkansas Code Annotated section 5-38-302 provides:

(a) A person commits the offense of reckless burning if the person purposely starts a fire or causes an explosion, whether on his or her own property or property of another person, and thereby recklessly:

- (1) Creates a substantial risk of death or serious physical injury to any person;
- (2) Destroys or causes substantial damage to an occupiable structure of another person; or

(3) Destroys or causes substantial damage to a vital public facility.

Appellant argues that while the State did prove appellant was present the night of the fire, it failed to introduce substantial evidence that he purposely started the fire. Appellant contends that out of the witness testimony presented by the State, only the testimony of Kathryn Terry showed that appellant had admitted helping build a fire in the building. But, appellant argues, Terry also testified that appellant was “pretty well drunk” and did not say much; therefore, the trial court “should not have found [appellant’s] statements to Ms. Terry to be credible.”

However, appellant’s argument is based on a disagreement with the credibility determinations made by the trial court, and it is well-settled that this court gives due deference to the superior position of the trial judge to determine the credibility of witnesses and the weight to be accorded to their testimony. *See Jenkins v. State*, 60 Ark. App. 122, 959 S.W.2d 427 (1998). With this standard in mind, we cannot say that the trial court erred in finding the State’s witnesses credible and, based on their testimony concerning appellant’s involvement with the fire, finding appellant guilty of reckless burning. Therefore, we find there was substantial evidence to support appellant’s conviction and affirm.

Affirmed.

MARSHALL and VAUGHT, JJ., agree.
